

MEMORANDUM

TO: Michael Lutz, Chairman,
Bay County Personnel and Human Services Committee

From: Amber L. Davis-Johnson,
Bay County Corporation Counsel

Re: Request by County Clerk to Retain Outside Legal Counsel

Date: June 16, 2015

Background:

This Board passed Resolution 2014-113 on June 17, 2014 which adopted the County's current Civil Counsel Guidelines. Those guidelines provide that only Corporation Counsel may enter into contracts for outside legal services, and sets forth a procedure for elected officials to request retention of such outside counsel. The County Clerk has, in conformance with those Guidelines, submitted a written request to retain outside counsel for potential litigation on behalf of the Clerk which may assert that the Bay County Board of Commissioners has failed to provide a serviceable level of funding to allow the Clerk's office to fulfill statutorily mandated functions. Corporation Counsel has an obligation to review the request and make a determination if such a request is necessary and appropriate and, in cases where a conflict of interest between County entities has arisen, may obtain the legal opinion of an independent attorney to determine if any potential cause of action is frivolous or has merit.

An independent analysis/evaluation by Resilient-C was commissioned by the Board of Commissioners in 2009 to analyze the operations in the Clerk's Office which determined that there was sufficient staffing in the office to provide the statutorily mandated services. There have been significant changes in the Clerk's Office since that time, including loss of a full time employee, changes in statutorily mandated responsibilities, and utilization of on-line services and availability of credit card payments through that on-line service. An up-to-date independent analysis of the work flow in the Clerk's Office would greatly assist Corporation Counsel in evaluating the Clerk's request to obtain outside counsel.

Financial Impact on the County:

The financial impact on the County would be the cost of the study itself. The prior resolution passed in 2009 approved a budget adjustment of up to \$4,000 for the work processes study. An increase in the amount not to exceed \$6,000 would seem appropriate for services at this date. The results of the survey may either cost the County additional funds for the retention of additional staffing in the Clerk's office, or may save costs for the retention of outside counsel if it is determined that the Clerk's office is sufficiently staffed. It is impossible to predict that economic impact at this time.

Recommendation:

That the Board Approve the request: (1) to retain an independent firm to study the work processes and work flow of the Clerk's office (at the cost of no more than \$6,000); and (2) for such firm to provide to the Board of Commissioners a recommendation regarding staffing and technology necessary for the Clerk's office to fulfill the statutorily mandated responsibilities at a serviceable level. This, along with consultation with the Clerk's office and other County entities with pertinent information, will allow Corporation Counsel (or an independent attorney) to better determine if the Clerk's request to retain outside counsel is necessary and appropriate and/or if the potential cause of action is frivolous or has merit, necessitating the retention of outside counsel.